

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
CHOWCHILLA WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM FRIANT DIVISION

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3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 CHOWCHILLA WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this 20th day of January, 2001, in pursuance generally of the Act
11 of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not
12 limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939
13 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat.
14 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title
15 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as
16 Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as
17 the United States, and CHOWCHILLA WATER DISTRICT, hereinafter referred to as the
18 Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to
19 the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,
24 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,

25 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of
26 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River
27 and their tributaries; and

28 [2nd] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton
29 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant
30 Division facilities, which will be used in part for the furnishing of water to the Contractor pursuant to
31 the terms of this Contract; and

32 [3rd] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the
33 United States has acquired water rights and other rights to the flows of the San Joaquin River,
34 including without limitation the permits issued as the result of Decision 935 by the California State
35 Water Resource Control Board and the contracts described in subdivision (n) of Article 3 of this
36 Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers Project
37 Water stored or flowing through Millerton Lake in accordance with State and Federal law for the
38 benefit of Project Contractors in the Friant Division; and

39 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project
40 Water developed through the exercise of the rights described in the third (3rd) Explanatory Recital of
41 this Contract; and

42 [3.2] WHEREAS, a contract dated May 24, 1939, was made and entered into between the
43 United States and the Madera Irrigation District entitled "Contract for Purchase of Property and
44 Water Rights," which contract is hereinafter referred to as the 1939 Contract, and a portion of said
45 contract was assigned to the Contractor; and

46 [3.3] WHEREAS, Contractor's rights under the aforesaid 1939 Contract have been
47 judicially determined that the Contractor has a vested right in perpetuity to receive a specified
48 quantity of water together, with the right of successive renewals of all contracts for delivery thereof;
49 and

50 [3.4] WHEREAS, Contractor's rights under the 1939 Contract have been satisfied under the
51 previous contracts for delivery of water from Friant Dam and will be satisfied for the term hereof
52 under this Contract, so long as the United States performs the terms and provisions by them to be
53 performed herein; and

54 [4th] WHEREAS, the Contractor and the United States entered into Contract No. I75r-
55 2358, as amended, which established terms for the delivery to the Contractor of Project Water from
56 the Friant Division from July 5, 1950, to February 28, 1991; and

57 [5th] WHEREAS, the Contractor and the United States entered into Renewal Contract
58 No. I75r-2358R, which provided for continued water service to the Contractor from the Friant
59 Division from March 1, 1991, through February 28, 2029, but, in light of the Ninth Circuit Court of
60 Appeals Opinion in the lawsuit entitled Natural Resources Defense Council, et al. v. Roger Patterson,
61 et al., that contract was replaced by Interim Renewal Contract No. I75r-2358-IR1, dated July 10,
62 1998, which provides for continued water service to the Contractor from the Friant Division from
63 September 14, 1998, through February 28, 2001; and

64 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim
65 and existing long-term Project Water service contracts following completion of appropriate
66 environmental documentation, including a programmatic environmental impact statement (PEIS)

67 pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and
68 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project
69 Water; and

70 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
71 environmental review necessary to provide for long-term renewal of the Existing Contract; and

72 [8th] WHEREAS, pursuant to its rights under the 1939 Contract, the Contractor has
73 requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing
74 Contract, Federal Reclamation law, and the laws of the State of California, for water service from the
75 Friant Division of the Central Valley Project; and

76 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
77 its obligations under the Existing Contract; and

78 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
79 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
80 beneficial use and/or has demonstrated projected future demand for water use such that the
81 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the quantity
82 of Project Water to be made available to it pursuant to this Contract; and

83 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by
84 urban and agricultural areas within California for more than fifty (50) years, and is considered by the
85 Contractor as an essential portion of its water supply; and

86 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
87 Contractor's, depend upon the continued availability of water, including water service from the
88 Central Valley Project; and

89 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
90 to pursue measures to improve water supply, water quality, and reliability of the Project for all
91 Project purposes; and

92 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
93 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
94 of the Central Valley Project as required by law; to guard reasonably against Project Water shortages;
95 to achieve a reasonable balance among competing demands for use of Project Water; and to comply
96 with all applicable environmental statutes, all consistent with the legal obligations of the United
97 States relative to the Central Valley Project; and

98 [15th] Omitted;

99 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize
100 undependable Class 2 Water in their service areas to, among other things, assist in the management
101 and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
102 environmental enhancement, including restoration of the San Joaquin River below Friant Dam,
103 minimize flooding along the San Joaquin River, encourage optimal water management, and maximize
104 the reasonable and beneficial use of the water; and

105 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
106 to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in
107 the Explanatory Recital immediately above; and

108 [16th] WHEREAS, the Contractor is entitled to long term renewal under its rights under the
109 1939 Contract, and the United States and the Contractor are willing to enter into this Contract
110 pursuant to Federal Reclamation Law on the terms and conditions set forth below; and

111 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
112 contained, it is hereby mutually agreed by the parties hereto as follows:

113 DEFINITIONS

114 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
115 with the intent of the parties as expressed in this Contract, the term:

116 (a) "Calendar Year" shall mean the period January 1 through December 31, both
117 dates inclusive;

118 (b) "Charges" shall mean the payments required by Federal Reclamation law in
119 addition to the Rates and Tiered Pricing Components specified in this Contract as determined
120 annually by the Contracting Officer pursuant to this Contract;

121 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through
122 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of
123 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera
124 Canals as a dependable water supply during each Year;

125 (b3) "Class 2 Water" shall mean that supply of water which can be made available
126 subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this Contract for
127 delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of
128 Class 1 Water. Because of its uncertainty as to availability and time of occurrence, such water will
129 be undependable in character and will be furnished only if, as, and when it can be made available as
130 determined by the Contracting Officer;

131 (c) "Condition of Shortage" shall mean a condition respecting the Project during
132 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract
133 Total;

134 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized
135 representative acting pursuant to this Contract or applicable Reclamation law or regulation;

136 (e) "Contract Total" shall mean the maximum amount of Class 1 Water, plus the
137 maximum amount of Class 2 Water to which the Contractor is entitled under subdivision (a) of
138 Article 3 of this Contract;

139 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
140 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,
141 which may be modified from time to time in accordance with Article 35 of this Contract without
142 amendment of this Contract;

143 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
144 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

145 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
146 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
147 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

148 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
149 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
150 Reclamation law;

151 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or
152 202(3) of the RRA, whichever is applicable;

153 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be
154 delivered in accordance with Section 204 of the RRA;

155 (l) "Irrigation Full Cost Water Rate" shall have the same meaning as "full cost" as
156 that term is used in paragraph (3) of Section 202 of the RRA;

157 (m) "Irrigation Water" shall mean water made available from the Project that is
158 used primarily in the production of agricultural crops or livestock, including domestic use incidental
159 thereto, and watering of livestock. Irrigation Water shall not include water used for purposes such as
160 the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal
161 enjoyment or water delivered to landholdings operated in units of less than five (5) acres unless the
162 Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to
163 any such landholding is a use described in this subdivision of this Article;

164 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
165 nonexempt land, as provided in 43 CFR 426.2;

166 (n2) "Long Term Historic Average" shall mean the average of the final forecast of
167 Water Made Available to the Contractor pursuant to this Contract and the contracts referenced in the
168 fourth (4th) and fifth (5th) Explanatory Recitals of this Contract;

169 (o) Omitted;

170 (p) "Municipal and Industrial (M&I) Full Cost Water Rate" shall mean the annual
171 rate, which, as determined by the Contracting Officer, shall amortize the expenditures for

172 construction allocable to Project M&I facilities in service, including, O&M deficits funded, less
173 payments, over such periods as may be required under Federal Reclamation law with interest
174 accruing from the dates such costs were first incurred plus the applicable rate for the O&M of such
175 Project facilities. Interest rates used in the calculation of the M&I Full Cost Rate shall comply with
176 the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the RRA;

177 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable
178 care, control, operation, repair, replacement (other than Capital replacement), and maintenance of
179 Project facilities;

180 (r) "Operating Non-Federal Entity" shall mean the Madera-Chowchilla Water and
181 Power Authority, a Non-Federal entity which has the obligation to operate and maintain all or a
182 portion of the Friant Division facilities pursuant to an agreement with the United States, and which
183 may have funding obligations with respect thereto;

184 (r2) "Other Water" shall mean water from the Project other than Irrigation Water as
185 described in subdivision (m) of this Article, which is used for a purpose that is considered to be an
186 irrigation use pursuant to State law such as the watering of landscaping or pasture for animals (e.g.,
187 horse) which are kept for the personal enjoyment. For purposes of this Contract, Other Water shall
188 be paid for at Rates and Charges identical to those established for municipal and industrial water
189 pursuant to the then current Municipal and Industrial (M&I) Ratesetting Policy.

190 (s) "Project" shall mean the Central Valley Project owned by the United States
191 and managed by the Department of the Interior, Bureau of Reclamation;

192 (t) "Project Contractors" shall mean all parties who have water service contracts
193 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

194 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
195 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
196 with the terms and conditions of water rights acquired pursuant to California law;

197 (v) "Rates" shall mean the payments determined annually by the Contracting
198 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
199 described in subdivision (a) of Article 7 of this Contract;

200 (w) Omitted;

201 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
202 successor, or an authorized representative acting pursuant to any authority of the Secretary and
203 through any agency of the Department of the Interior;

204 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for
205 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

206 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for
207 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

208 (aa) "Water Made Available" shall mean the estimated amount of Project Water
209 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
210 pursuant to subdivision (a) of Article 4 of this Contract;

211 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor
212 for which times and quantities for delivery have been established by the Contractor and Contracting
213 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

214 (cc) "Year" shall mean the period from and including March 1 of each Calendar
215 Year through the last day of February of the following Calendar Year.

216 TERM OF CONTRACT

217 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In
218 the event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall
219 submit a request for renewal in writing to the Contracting Officer no later than two years prior to the
220 date this Contract expires. If the Contracting Officer determines that the Contractor has performed
221 the terms and conditions of the Existing Contract, the Contracting Officer shall renew this Contract
222 and subsequent contracts insofar as it pertains to the furnishing of Irrigation Water to the Contractor
223 on terms and conditions mutually agreeable for the longest period prescribed by law.

224 (b) Omitted.

225 (c) Omitted.

226 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
227 Project construction expected to occur will have occurred, and on that basis the Contracting Officer
228 agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees
229 further that, at any time after such allocation is made, and subject to satisfaction of the conditions set
230 out in this subdivision of this Article, this Contract shall, at the request of the Contractor, be
231 converted to a contract under subsection (c)(1) and (d) of Section 9, of the Reclamation Project Act
232 of 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable
233 to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
234 determination by the Contracting Officer that, account being taken of the amount credited to return

235 by the Contractor as provided for under Reclamation law, the remaining amount of construction costs
236 assignable for ultimate return by the Contractor can probably be repaid to the United States within the
237 term of a contract under said subsection 9(c)(1) and (d). If the remaining amount of costs that are
238 properly assignable to the Contractor cannot be determined by December 31, 2024, the Contracting
239 Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be
240 made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible
241 so as to permit, upon request of the Contractor and satisfaction of the conditions set out above,
242 conversion to a contract under said subsection 9(c)(1) and (d). In the event such determination of
243 costs has not been made at a time which allows conversion of this Contract during the term of this
244 Contract or the Contractor has not requested conversion of this Contract within such term, the parties
245 shall incorporate in any subsequent renewal contract as described in Article 2(a) a provision that
246 carries forth in substantially identical terms the provisions of this Article 2(d). In the event the
247 Contracting Officer is able to make a determination of the remaining amount of costs that are
248 properly assignable to the Contractor before December 31, 2024, the Contracting Officer shall do so
249 at the earliest time he/she has such ability.

250 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

251 3. (a) During each Year, consistent with all applicable State water rights, permits,
252 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
253 Contract, the Contracting Officer shall make available for delivery to the Contractor 55,000 acre-feet
254 of Class 1 Water and 160,000 acre-feet of Class 2 Water, for irrigation purposes. The quantity of

255 Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for
256 pursuant to the provisions of Articles 4 and 7 of this Contract.

257 (b) Omitted.

258 (c) The Contractor shall utilize the Project Water in accordance with all applicable
259 legal requirements.

260 (d) The Contractor shall make reasonable and beneficial use of all Project Water
261 or other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater
262 banking programs, surface water storage programs, and other similar programs utilizing Project
263 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
264 Area which are consistent with applicable State law and result in use consistent with Reclamation law
265 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's
266 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That
267 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service
268 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
269 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,
270 groundwater banking programs, surface water storage programs, and other similar programs utilizing
271 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's
272 Service Area may be permitted upon written approval of the Contracting Officer, which approval will
273 be based upon environmental documentation, Project Water rights, and Project operational concerns.
274 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

275 (e) The Contractor shall comply with requirements applicable to the Contractor in
276 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
277 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
278 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or
279 requirements imposed by environmental documentation applicable to the Contractor and within its
280 legal authority to implement regarding specific activities. Nothing herein shall be construed to
281 prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction
282 with respect to any biological opinion or other environmental documentation referred to in this
283 Article.

284 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
285 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will
286 make a determination whether Project Water, or other water available to the Project, can be made
287 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during
288 the Year without adversely impacting other Project Contractors. At the request of the Contractor, the
289 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to
290 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that
291 Project Water, or other water available to the Project, can be made available to the Contractor, the
292 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
293 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project
294 Contractors capable of taking such water to determine the most equitable and efficient allocation of
295 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting

296 Officer shall make such water available to the Contractor in accordance with applicable statutes,
297 regulations, guidelines, and policies.

298 (g) The Contractor may request permission to reschedule for use during the
299 subsequent Year some or all of the Water Made Available to the Contractor during the current Year
300 referred to as “carryover.” The Contractor may request permission to use during the current Year a
301 quantity of Project Water which may be made available by the United States to the Contractor during
302 the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit
303 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

304 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
305 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the
306 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
307 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
308 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the
309 Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
310 this Contract or applicable provisions of any subsequent renewal contracts.

311 (i) Project Water furnished to the Contractor pursuant to this Contract may be
312 delivered for purposes other than those described in subdivisions (m) and (r2) of Article 1 of this
313 Contract upon written approval by the Contracting Officer in accordance with the terms and
314 conditions of such approval.

315 (j) The Contracting Officer shall make reasonable efforts to protect the water
316 rights and other rights described in the third (3rd) Explanatory Recital of this Contract and to provide

317 the water available under this Contract. The Contracting Officer shall not object to participation by
318 the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings
319 related to the water rights and other rights described in the third (3rd) Explanatory Recital of this
320 Contract; Provided, however, That the Contracting Officer retains the right to object to the substance
321 of the Contractor's position in such a proceeding.

322 (k) Project Water furnished to the Contractor during any month designated in a
323 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer
324 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1
325 Water is called for in such schedule for such month and shall be deemed to have been accepted as
326 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any
327 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and
328 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,
329 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water
330 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply
331 available in the current Year is not sufficient to account for such additional diversions, such
332 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply
333 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2
334 Water supplies available in the current Year are not sufficient to account for such additional
335 diversions, such additional diversions shall be charged first against the Contractor's available Class 2
336 Water supply and then against the Contractor's available Class 1 Water supply, both for the following

337 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
338 this Contract.

339 (l) If the Contracting Officer determines there is a Project Water supply available
340 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project
341 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be
342 made available to the Contractor and others under Section 215 of the RRA pursuant to the priorities
343 specified below if the Contractor enters into a temporary contract with the United States not to
344 exceed one (1) year for the delivery of such water or, as otherwise provided for in Federal
345 Reclamation law and associated regulations. Such water may be identified by the Contractor either
346 (i) as additional water to supplement the supply of Class 1 Water and/or Class 2 Water made
347 available to it pursuant to this Contract or, (ii) upon written notification to the Contracting Officer, as
348 water to be credited against the Contractor's Class 2 Water supply available pursuant to this Contract.
349 The Contractor shall deliver such water to Eligible Lands, or to Excess Lands in accordance with this
350 Article. The Contracting Officer shall make water determined to be available pursuant to this
351 subsection according to the following priorities: first, to long-term contractors for Class 1 Water
352 and/or Class 2 Water within the Friant Division; second, to long-term contractors in the Cross Valley
353 Division of the Project. The Contracting Officer will consider and seek to accommodate requests
354 from other parties for Section 215 Water for use within the area identified as the Friant Division
355 service area in the environmental assessment developed in connection with the execution of this
356 Contract.

357 (m) Nothing in this Contract, nor any action or inaction of the Contractor or

358 Contracting Officer in connection with the implementation of this Contract, is intended to override,
359 modify, supersede or otherwise interfere with any term or condition of the water rights and other
360 rights referred in the third (3rd) Explanatory Recital of this Contract.

361 (n) The rights of the Contractor under this Contract are subject to the terms of the
362 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and
363 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the
364 Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not
365 deliver to the Exchange Contractors thereunder waters of the San Joaquin River unless and until
366 required by the terms of said contract, and the United States further agrees that it will not voluntarily
367 and knowingly determine itself unable to deliver to the Exchange Contractors entitled thereto from
368 water that is available or that may become available to it from the Sacramento River and its
369 tributaries or the Sacramento-San Joaquin Delta those quantities required to satisfy the obligations of
370 the United States under said Exchange Contract and under Schedule 2 of the Contract for Purchase of
371 Miller and Lux Water Rights (Contract I1r-1145, dated July 27, 1939).

372 TIME FOR DELIVERY OF WATER

373 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
374 announce the Contracting Officer's expected declaration of the Water Made Available. The
375 declaration will be updated monthly, and more frequently if necessary, based on then-current
376 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
377 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
378 basis of the estimate, with relevant supporting information, upon the written request of the

379 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
380 shall provide the Contractor with the updated Long Term Historic Average. The declaration of
381 Project operations will be expressed in terms of both Water Made Available and the Long Term
382 Historic Average.

383 (b) On or before each March 1 and at such other times as necessary, the
384 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting
385 Officer, showing the monthly quantities of Project Water to be delivered by the United States to the
386 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
387 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
388 for the Year commencing on such March 1.

389 (c) The Contractor shall not schedule Project Water in excess of the quantity of
390 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's
391 Service Area, or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

392 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
393 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
394 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
395 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to
396 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total
397 amount of water requested in that schedule or revision does not exceed the quantities announced by
398 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3, and the Contracting
399 Officer determines that there will be sufficient capacity available in the appropriate Friant Division

400 facilities to deliver the water in accordance with that schedule: Provided, further, That the Contractor
401 shall not schedule the delivery of any water during any period as to which the Contractor is notified
402 by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make
403 deliveries to the Contractor will not be in operation because of scheduled O&M.

404 (e) The Contractor may, during the period from and including November 1 of each
405 Year through and including the last day of February of that Year, request delivery of any amount of
406 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following
407 Year. The Contractor may, during the period from and including January 1 of each Year (or such
408 earlier date as may be determined by the Contracting Officer) through and including the last day of
409 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting
410 Officer to be made available to it during the following Year. Such water shall hereinafter be referred
411 to as preuse water. Such request must be submitted in writing by the Contractor for a specified
412 quantity of preuse and shall be subject to the approval of the Contracting Officer. Payment for preuse
413 water so requested shall be at the appropriate rate(s) for the following Year in accordance with
414 Article 7 of this Contract and shall be made in advance of delivery of any preuse water. The
415 Contracting Officer shall deliver such preuse water in accordance with a schedule or any revision
416 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water
417 is available and to the extent such deliveries will not interfere with the delivery of Project Water
418 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.
419 The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
420 quantities of water that the Contracting Officer would otherwise be obligated to make available to the

421 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted
422 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in
423 the following Year shall be specified by the Contractor at the time the preuse water is requested or as
424 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of
425 this Article, based on the availability of the following Year water supplies as determined by the
426 Contracting Officer.

427 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

428 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
429 Contract shall be delivered to the Contractor at a point or points of delivery either on Project facilities
430 or another location or locations mutually agreed to in writing by the Contracting Officer and the
431 Contractor.

432 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
433 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
434 the Madera Canal to deliver Project Water to the Contractor at specific turnouts established pursuant
435 to subdivision (a) of this Article.

436 (c) The Contractor shall deliver Irrigation Water and Other Water in accordance
437 with any applicable land classification provisions of Federal Reclamation law and the associated
438 regulations. The Contractor shall not deliver Project Water to land outside the Contractor's Service
439 Area unless approved in advance by the Contracting Officer.

440 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
441 measured and recorded with equipment furnished, installed, operated, and maintained by the United

442 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting
443 Officer (hereafter “other appropriate entity”) at the point or points of delivery established pursuant to
444 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
445 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,
446 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
447 therein. For any period of time when accurate measurements have not been made, the Contracting
448 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to
449 making a final determination of the quantity delivered for that period of time.

450 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
451 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
452 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
453 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
454 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
455 for which there is legal responsibility, including property damage, personal injury, or death arising
456 out of or connected with the control, carriage, handling, use, disposal, or distribution of such Project
457 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or
458 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
459 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in
460 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,
461 employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii)
462 negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including

463 any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction
464 of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity;
465 Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated the
466 malfunctioning facility(ies) from which the damage claim arose.

467 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

468 6. (a) The Contractor established a measurement program satisfactory to the
469 Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's
470 Service Area is measured at each agricultural turnout. The water measuring devices or water
471 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The
472 Contractor shall be responsible for installing, operating, and maintaining and repairing all such
473 measuring devices and implementing all such water measuring methods at no cost to the United
474 States. The Contractor shall use the information obtained from such water measuring devices or
475 water measuring methods to ensure its proper management of the water, to bill water users for water
476 delivered by the Contractor. Nothing herein contained, however, shall preclude the Contractor from
477 establishing and collecting any charges, assessments, or other revenues authorized by California law.
478 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
479 described in subdivision (c) of Article 26 of this Contract.

480 (b) To the extent the information has not otherwise been provided, upon execution
481 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
482 the measurement devices or water measuring methods being used or to be used to implement
483 subdivision (a) of this Article and identifying the agricultural turnouts or alternative measurement

484 programs approved by the Contracting Officer, at which such measurement devices or water
485 measuring methods are being used, and, if applicable, identifying the locations at which such devices
486 and/or methods are not yet being used including a time schedule for implementation at such
487 locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to
488 the adequacy of, and necessary modifications, if any, of the measuring devices or water measuring
489 methods identified in the Contractor's report and if the Contracting Officer does not respond in such
490 time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the
491 measuring devices or methods are inadequate, the parties shall within sixty (60) days following the
492 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the
493 Contractor shall modify said measuring devices and/or measuring methods as required by the
494 Contracting Officer to ensure compliance with subdivision (a) of this Article.

495 (c) All new surface water delivery systems installed within the Contractor's
496 Service Area after the effective date of this Contract shall also comply with the measurement
497 provisions described in subdivision (a) of this Article.

498 (d) The Contractor shall inform the Contracting Officer and the State of California
499 in writing by April 30 of each Year of the monthly volume of surface water delivered within the
500 Contractor's Service Area during the previous Year.

501 (e) The Contractor shall inform the Contracting Officer and the Operating
502 Non-Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of
503 Irrigation and Other Water taken during the preceding month.

504 RATES AND METHOD OF PAYMENT FOR WATER

505 7. (a) The Contractor shall pay the United States as provided in this Article for all

506 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
507 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
508 then-existing ratesetting policy for M&I water. Such ratesetting policies shall be amended, modified,
509 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law
510 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
511 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in
512 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
513 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B",
514 as may be revised annually.

515 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
516 Tiered Pricing Components as follows:

517 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
518 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
519 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
520 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review
521 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
522 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
523 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
524 such notification shall revise Exhibit "B."

525 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
526 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project

527 Water for the following Year and the computations and cost allocations upon which those Rates are
528 based. The Contractor shall be allowed not less than two (2) months to review and comment on such
529 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
530 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for
531 the upcoming Year, and such notification shall revise Exhibit "B."

532 (c) At the time the Contractor submits the initial schedule for the delivery of
533 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
534 shall make an advance payment to the United States equal to the total amount payable pursuant to the
535 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
536 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
537 end of the first month and before the end of each calendar month thereafter, the Contractor shall
538 make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article,
539 for the Water Scheduled to be delivered pursuant to this Contract during the second month
540 immediately following. Adjustments between advance payments for Water Scheduled and payments
541 at Rates due for Water Delivered shall be made before the end of the following month; Provided,
542 That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
543 increases the amount of Water Delivered pursuant to this Contract during any month shall be
544 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
545 Water is not delivered to the Contractor in advance of such payment. In any month in which the
546 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water
547 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the

548 Contractor unless and until an advance payment at the Rates then in effect for such additional Project
549 Water is made. Final adjustment between the advance payments for the Water Scheduled and
550 payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be
551 made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days after
552 the delivery of Project Water carried over under subdivision (f) of Article 3 of this Contract if such
553 water is not delivered by the last day of February.

554 (d) The Contractor shall also make a payment in addition to the Rate(s) in
555 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
556 appropriate Tiered Pricing Component then in effect, before the end of the month following the
557 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
558 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
559 with the quantities of Irrigation Water and Other Water Delivered as shown in the water delivery
560 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating
561 Non-Federal Entity, by the Contracting Officer. Such water delivery report shall be the basis for
562 payment of Charges and Tiered Pricing Components by the Contractor, and shall be provided to the
563 Contractor by the Operating Non-Federal Entity or the Contracting Officer (as applicable) within
564 five (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill
565 for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
566 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
567 payments due to the United States for Charges for the next month. Any amount to be paid for past
568 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20

569 of this Contract.

570 (e) The Contractor shall pay for any Water Delivered under subdivisions (d), (f),
571 or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
572 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
573 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
574 be no more than the otherwise applicable Rate for Irrigation Water or Other Water under subdivision
575 (a) of this Article.

576 (f) Payments to be made by the Contractor to the United States under this
577 Contract may be paid from any revenues available to the Contractor.

578 (g) All revenues received by the United States from the Contractor relating to the
579 delivery of Project Water or the delivery of non-project water through Project facilities shall be
580 allocated and applied in accordance with Federal Reclamation law and the associated rules or
581 regulations, and the then current Project ratesetting policies for M&I water or Irrigation Water.

582 (h) The Contracting Officer shall keep its accounts pertaining to the administration
583 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
584 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
585 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
586 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
587 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
588 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
589 reports, or information.

590 (i) The parties acknowledge and agree that the efficient administration of this
591 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
592 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,
593 and/or for making and allocating payments, other than those set forth in this Article may be in the
594 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to
595 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in
596 effect without amending this Contract.

597 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water
598 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end
599 of the month following the month of delivery the Contractor shall make an additional payment to the
600 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for
601 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the
602 Contract Total, but less than or equal to ninety (90%) percent of the Contract Total, shall equal the
603 one-half of the difference between the Rate established under subdivision (a) of Article 7 of this
604 Contract and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is
605 applicable. The Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class
606 2 Water which exceeds ninety (90%) percent of the Contract Total shall equal the difference between
607 (i) the Rate established under subdivision (a) of Article 7 of this Contract and (ii) the Irrigation Full
608 Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

609 (2) Subject to the Contracting Officer's written approval, the Contractor
610 may request and receive an exemption from such Tiered Pricing Components for Project Water

611 delivered to produce a crop which the Contracting Officer determines will provide significant and
612 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
613 Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply
614 only if such habitat values can be assured consistent with the purposes of CVPIA through binding
615 agreements executed with or approved by the Contracting Officer prior to use of such water.

616 (3) For purposes of determining the applicability of the Tiered Pricing
617 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor
618 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

619 (k) For the term of this Contract, Rates under the respective ratesetting policies
620 will be established to recover only reimbursable “operation and maintenance” (including any deficits)
621 and capital costs of the Project, as those terms are used in the then-current Project ratesetting
622 policies, and interest, where appropriate, except in instances where a minimum Rate is applicable in
623 accordance with the relevant Project ratesetting policy. Changes of significance in practices which
624 implement the Contracting Officer’s ratesetting policies will not be implemented until the
625 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
626 impact of the proposed change.

627 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
628 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates adjusted
629 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water
630 to the transferee’s point of delivery in accordance with the then applicable CVP Ratesetting Policy.
631 If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring

632 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
633 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges
634 unadjusted for ability to pay.

635 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
636 Officer is authorized to adjust determinations of ability to pay every five (5) years.

637 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

638 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
639 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall
640 have no further liability therefor.

641 SALES, TRANSFERS, OR EXCHANGES OF WATER

642 9. (a) The right to receive Project Water provided for in this Contract may be sold,
643 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
644 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
645 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
646 Contract may take place without the prior written approval of the Contracting Officer, except as
647 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
648 approved absent compliance with appropriate environmental documentation including but not limited
649 to the National Environmental Policy Act and the Endangered Species Act. Such environmental
650 documentation should include, as appropriate, an analysis of groundwater impacts and economic and
651 social effects, including environmental justice, of the proposed water transfers on both the transferor
652 and transferee.

653 (b) In order to facilitate efficient water management by means of water transfers of
654 the type historically carried out among Project Contractors located within the same geographical area
655 and to allow the Contractor to participate in an accelerated water transfer program during the term of
656 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental
657 documentation including, but not limited to, the National Environmental Policy Act and the
658 Endangered Species Act analyzing annual transfers within such geographical areas and the
659 Contracting Officer shall determine whether such transfers comply with applicable law. Following
660 the completion of the environmental documentation, such transfers addressed in such documentation
661 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written
662 approval by the Contracting Officer. Such environmental documentation and the Contracting
663 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,
664 prior to the expiration of the then existing five (5) -year period. All subsequent environmental
665 documentation shall include an alternative to evaluate not less than the quantity of Project Water
666 historically transferred within the same geographical area.

667 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
668 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for
669 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface water
670 storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established
671 cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a
672 single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through
673 existing facilities with no new construction or modifications to facilities and be between existing

674 Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v)
675 comply with all applicable Federal, State, and local or tribal laws and requirements imposed for
676 protection of the environment and Indian Trust Assets, as defined under Federal law.

677 APPLICATION OF PAYMENTS AND ADJUSTMENTS

678 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
679 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
680 the Contractor arising out of this Contract then due and payable. Overpayments of more than One
681 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
682 amount of such overpayment at the option of the Contractor, may be credited against amounts to
683 become due to the United States by the Contractor. With respect to overpayment, such refund or
684 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
685 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of
686 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as
687 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
688 finalized the accounts for the Year in which the overpayment was made.

689 (b) All advances for miscellaneous costs incurred for work requested by the
690 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when
691 the work has been completed. If the advances exceed the actual costs incurred, the difference will be
692 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will
693 be billed for the additional costs pursuant to Article 25 of this Contract.

694 TEMPORARY REDUCTIONS--RETURN FLOWS

695 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
696 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or
697 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make
698 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
699 Contract.

700 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
701 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
702 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
703 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far
704 as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due
705 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
706 which case no notice need be given; Provided, That the United States shall use its best efforts to
707 avoid any discontinuance or reduction in such service. Upon resumption of service after such
708 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
709 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
710 such discontinuance or reduction.

711 (c) The United States reserves the right to all seepage and return flow water
712 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
713 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
714 States any right as seepage or return flow to water being used pursuant to this Contract for surface

715 irrigation or underground storage either being put to reasonable and beneficial use pursuant to this
716 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or
717 under the Contractor. For purposes of this subdivision, groundwater recharge, groundwater banking
718 and all similar groundwater activities will be deemed to be underground storage.

719 CONSTRAINTS ON THE AVAILABILITY OF WATER

720 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
721 means to guard against a Condition of Shortage in the quantity of water to be made available to the
722 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a
723 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said
724 determination as soon as practicable.

725 (b) If there is a Condition of Shortage because of errors in physical operations of
726 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
727 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
728 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
729 agents, or employees for any damage, direct or indirect, arising therefrom.

730 (c) The United States shall not execute contracts which together with this
731 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals
732 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of
733 1,401,475 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract,
734 the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering
735 into temporary contracts of one year or less in duration for delivery of Project Water to other entities

736 if such water is not necessary to meet the schedules as may be submitted by all Friant Division
737 long-term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under
738 their water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability
739 to take actions that result in the availability of new water supplies to be used for Project purposes and
740 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until
741 after consultation with the Friant Division Project Contractors.

742 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or
743 any other contract for water service heretofore or hereafter entered into any Year unless and until the
744 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in
745 subdivision (c) of this Article will be available for delivery in said Year. If the Contracting Officer
746 determines there is or will be a shortage in any Year in the quantity of Class 1 Water available for
747 delivery, the Contracting Officer shall apportion the available Class 1 Water among all contractors
748 entitled to receive such water that will be made available at Friant Dam in accordance with the
749 following:

750 (1) A determination shall be made of the total quantity of Class 1 Water at
751 Friant Dam which is available for meeting Class 1 Water contractual commitments, the amount so
752 determined being herein referred to as the available supply.

753 (2) The total available Class 1 supply shall be divided by the Class 1 Water
754 contractual commitments, the quotient thus obtained being herein referred to as the Class 1
755 apportionment coefficient.

756 (3) The total quantity of Class 1 Water under Article 3 of this Contract
757 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of
758 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the respective
759 Year, but in no event shall such amount exceed the total quantity of Class 1 Water specified in
760 subdivision (a) of Article 3 of this Contract.

761 (e) If the Contracting Officer determines there is less than the quantity of Class 2
762 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3 of this
763 Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the Contracting
764 Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of subdivision (d) of
765 this Article substituting the term "Class 2" for the term "Class 1."

766 (f) In the event that in any Year there is made available to the Contractor, by
767 reason of any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or
768 any discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this
769 Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive
770 hereunder, there shall be made an adjustment on account of the amounts already paid to the
771 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in
772 accordance with Article 10 of this Contract.

773 UNAVOIDABLE GROUNDWATER PERCOLATION

774 13. To the extent applicable, the Contractor shall not be deemed to have delivered
775 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such
776 lands

777 are irrigated with groundwater that reaches the underground strata as an unavoidable result of the
778 delivery of Irrigation Water by the Contractor to Eligible Lands.

779 RULES AND REGULATIONS

780 14. (a) The parties agree that the delivery of Irrigation Water or use of Federal
781 facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to,
782 the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and
783 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

784 (b) The Contractor shall comply with all terms and conditions of this Contract and
785 all legal obligations of the Contractor, if any, set forth in an enforceable court order, final judgment
786 and/or settlement relating to restoration of the San Joaquin River. Accordingly, the terms of this
787 Contract are subject to any enforceable order, judgment and/or settlement in NRDC v. Patterson,
788 No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary to effectuate or facilitate any
789 final order, judgment or settlement in said litigation.

790 (c) The parties acknowledge that, as of the effective date of this Contract, active
791 settlement discussions are underway in NRDC v. Patterson between Friant Division water service
792 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The
793 mutual goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a
794 mutually acceptable basis, instream and related measures that will restore ecological functions and
795 hydrologic and geomorphologic processes of the San Joaquin River below Friant Dam to a level that
796 restores and maintains fish populations in good condition, including but not limited to naturally-
797 reproducing, self-sustaining populations of chinook salmon and (ii) to accomplish these restoration
798 goals while not adversely impacting the overall sufficiency, reliability and cost of water supplies to
799 Friant Division water users. The Contractor has been actively participating, and intends to continue
800 to participate in such settlement discussions. Except as provided in this Contract, this Contract does

801 not add to the obligations of the parties, if any, relating to the San Joaquin River. This Contract does
802 not limit or detract from the obligations of the parties, if any, relating to the San Joaquin River.

803 WATER AND AIR POLLUTION CONTROL

804 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
805 and air pollution laws and regulations of the United States and the State of California, and shall
806 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

807 QUALITY OF WATER

808 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
809 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
810 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
811 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
812 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
813 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
814 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
815 Contractor pursuant to this Contract.

816 (b) The Operation and Maintenance of Project facilities shall be performed in such
817 manner as is practicable to maintain the quality of raw water made available through such facilities at
818 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor
819 shall be responsible for compliance with all State and Federal water quality standards applicable to
820 surface and subsurface agricultural drainage discharges generated through the use of Federal or
821 Contractor facilities or Project Water provided by the Contractor within the Contractor's Service
822 Area.

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WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

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17. (a) Water or water rights now owned or hereafter acquired by the Contractor other

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than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may

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be simultaneously transported through the same distribution facilities of the Contractor subject to the

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following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were

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constructed without funds made available pursuant to Federal Reclamation law, the provisions of

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Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation

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Water; (ii) the eligibility of land to receive Irrigation Water must be established through the

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certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR

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Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be

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established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity

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necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer acknowledge

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that the Contractor's distribution system that was constructed with Federal financing was, prior to

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effective date of this Contract, repaid in full and title to the facilities transferred to the Contractor.

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As such, when such facilities are utilized for commingling Irrigation Water and non-project water,

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the provisions of Federal Reclamation law will be applicable only to the landholders of lands which

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receive Irrigation Water.

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(b) Water or water rights now owned or hereafter acquired by the Contractor, other

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than from the United States or adverse to the Project or its contractors (i.e., non-project water), may

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be stored, conveyed and/or diverted through Project facilities, subject to the completion of

844 appropriate environmental documentation, with the approval of the Contracting Officer and the
845 execution of any contract determined by the Contracting Officer to be necessary, consistent with the
846 following provisions:

847 (1) The Contractor may introduce non-project water into Project facilities
848 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
849 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
850 appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended,
851 modified or superseded from time to time. In addition, if electrical power is required to pump non-
852 project water through the facilities, the Contractor shall be responsible for obtaining the necessary
853 power and paying the necessary charges therefor.

854 (2) Delivery of such non-project water in and through Project facilities
855 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
856 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
857 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to
858 any other Project water service contractors; or (iv) interfere with the physical maintenance of the
859 Project facilities.

860 (3) Neither the United States nor the Operating Non-Federal Entity shall be
861 responsible for control, care or distribution of the non-project water before it is introduced into or
862 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
863 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,

864 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting
865 from Contractor's diversion or extraction of non-project water from any source.

866 (4) Diversion of such non-project water into Project facilities shall be
867 consistent with all applicable laws, and if involving groundwater, consistent with any groundwater
868 management plan for the area from which it was extracted.

869 (5) After Project purposes are met, as determined by the Contracting
870 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of
871 the facilities declared to be available by the Contracting Officer for conveyance and transportation of
872 non-project water prior to any such remaining capacity being made available to non-Project
873 contractors.

874 OPINIONS AND DETERMINATIONS

875 18. (a) Where the terms of this Contract provide for actions to be based upon the
876 opinion or determination of either party to this Contract, said terms shall not be construed as
877 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
878 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
879 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
880 unreasonable opinion or determination. Each opinion or determination by either party shall be
881 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
882 or shall affect or alter the standard of judicial review applicable under federal law to any opinion or
883 determination implementing a specific provision of federal law embodied in statute or regulation.

884 (b) The Contracting Officer shall have the right to make determinations necessary
885 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
886 United States and of the State of California, and the rules and regulations promulgated by the
887 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
888 the extent reasonably practicable.

889 COORDINATION AND COOPERATION

890 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
891 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
892 affected Project Contractors, in order to improve the operation and management of the Project. The
893 communication, coordination, and cooperation regarding operations and management shall include,
894 but not be limited to, any action which will or may materially affect the quantity or quality of Project
895 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
896 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
897 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
898 authority for all actions, opinion, and determinations to be made by the respective party.

899 (b) Within one-hundred twenty (120) days following the effective date of this
900 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange
901 to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide
902 process, which may be amended as necessary separate and apart from this Contract. The goal of this
903 process shall be to provide, to the extent practicable, the means of mutual communication and
904 interaction regarding significant decisions concerning Project operation and management on a
905 real-time basis.

906 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
907 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

908 (1) The Contracting Officer will, at the request of the Contractor, assist in
909 the development of integrated resource management plans for the Contractor. Further, the
910 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
911 improve water supply, water quality, and reliability.

912 (2) The Secretary will, as appropriate, pursue program and project
913 implementation and authorization in coordination with Project Contractors to improve the water
914 supply, water quality, and reliability of the Project for all Project purposes.

915 (3) The Secretary will coordinate with Project Contractors and the State of
916 California to seek improved water resource management.

917 (4) The Secretary will coordinate actions of agencies within the
918 Department of the Interior that may impact the availability of water for Project purposes.

919 (5) The Contracting Officer shall periodically, but not less than annually, hold
920 division level meetings to discuss Project operations, division level water management activities, and
921 other issues as appropriate.

922 (d) Without limiting the contractual obligations of the Contracting Officer
923 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's
924 ability to communicate, coordinate, and cooperate with the Contractor or other interested
925 stakeholders or to make decisions in a timely fashion as needed to protect health, safety, physical
926 integrity of structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

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CHARGES FOR DELINQUENT PAYMENTS

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20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

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(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

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(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

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EQUAL OPPORTUNITY

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21. During the performance of this Contract, the Contractor agrees as follows:

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(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

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959 (c) The Contractor will send to each labor union or representative of workers with
960 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
961 provided by the Contracting Officer, advising the said labor union or workers' representative of the
962 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
963 shall post copies of the notice in conspicuous places available to employees and applicants for
964 employment.

965 (d) The Contractor will comply with all provisions of Executive Order
966 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
967 the Secretary of Labor.

968 (e) The Contractor will furnish all information and reports required by said
969 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
970 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
971 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
972 regulations, and orders.

973 (f) In the event of the Contractor's noncompliance with the nondiscrimination
974 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
975 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
976 for further Government contracts in accordance with procedures authorized in said amended
977 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said
978 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
979 by law.

980 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
981 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
982 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
983 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
984 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
985 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,
986 That in the event the Contractor becomes involved in, or is threatened with, litigation with a
987 subcontractor or vendor as a result of such direction, the Contractor may request the United States to
988 enter into such litigation to protect the interests of the United States.

989 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

990 22. (a) The obligation of the Contractor to pay the United States as provided in this
991 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation
992 may be distributed among the Contractor's water users and notwithstanding the default of individual
993 water users in their obligations to the Contractor.

994 (b) The payment of charges becoming due hereunder is a condition precedent to
995 receiving benefits under this Contract. The United States shall not make water available to the
996 Contractor through Project facilities during any period in which the Contractor may be in arrears in
997 the advance payment of water rates due the United States. The Contractor shall not furnish water
998 made available pursuant to this Contract for lands or parties which are in arrears in the advance
999 payment of water rates levied or established by the Contractor.

1000 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1001 obligation to require advance payment for water rates which it levies.

1002 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1003 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
1004 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1005 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1006 well as with their respective implementing regulations and guidelines imposed by the U.S.
1007 Department of the Interior and/or Bureau of Reclamation.

1008 (b) These statutes require that no person in the United States shall, on the grounds
1009 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1010 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1011 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1012 agrees to immediately take any measures necessary to implement this obligation, including permitting
1013 officials of the United States to inspect premises, programs, and documents.

1014 (c) The Contractor makes this agreement in consideration of and for the purpose
1015 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1016 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1017 installment payments after such date on account of arrangements for Federal financial assistance
1018 which were approved before such date. The Contractor recognizes and agrees that such Federal
1019 assistance will be extended in reliance on the representations and agreements made in this Article,
1020 and that the United States reserves the right to seek judicial enforcement thereof.

1021 PRIVACY ACT COMPLIANCE

1022 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1023 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1024 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1025 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
1026 Stat. 1266), and pursuant to 43 CFR 426.18.

1027 (b) With respect to the application and administration of the criminal penalty
1028 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1029 for maintaining the certification and reporting records referenced in (a) above are considered to be
1030 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1031 (c) The Contracting Officer or a designated representative shall provide the
1032 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1033 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1034 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1035 contained in the Landholder's certification and reporting records.

1036 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1037 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1038 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1039 authorized to grant requests by individuals for access to their own records.

1040 (e) The Contractor shall forward promptly to the System Manager each proposed
1041 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1042 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1043 information and records necessary to prepare an appropriate response to the requester. These
1044 requirements do not apply to individuals seeking access to their own certification and reporting forms
1045 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1046 Act as a basis for the request.

1047 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1048 25. In addition to all other payments to be made by the Contractor pursuant to this
1049 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill
1050 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1051 of direct cost incurred by the United States for work requested by the Contractor associated with this
1052 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1053 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1054 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1055 administration.

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WATER CONSERVATION

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26. (a) Prior to the delivery of water provided from or conveyed through Federally

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constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be

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implementing an effective water conservation and efficiency program based on the Contractor's water

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conservation plan that has been determined by the Contracting Officer to meet the conservation and

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efficiency criteria for evaluating water conservation plans established under Federal law. The water

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conservation and efficiency program shall contain definite water conservation objectives, appropriate

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economically feasible water conservation measures, and time schedules for meeting those objectives.

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Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's

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continued implementation of such water conservation program. In the event the Contractor's water

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conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of

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Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such

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criteria, due to circumstances which the Contracting Officer determines are beyond the control of the

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Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently

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works with the Contracting Officer to obtain such determination at the earliest practicable date, and

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thereafter the Contractor immediately begins implementing its water conservation and efficiency

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program in accordance with the time schedules therein.

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(b) Omitted.

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(c) The Contractor shall submit to the Contracting Officer a report on the status of

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its implementation of the water conservation plan on the reporting dates specified in the then existing

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conservation and efficiency criteria established under Federal law.

1077 (d) At five (5) -year intervals, the Contractor shall revise its water conservation
1078 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation
1079 plans established under Federal law and submit such revised water management plan to the
1080 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1081 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1082 evaluating water conservation plans established under Federal law.

1083 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1084 be described in the Contractor's water conservation plan.

1085 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1086 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1087 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter
1088 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1089 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1090 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1091 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1092 Reclamation law.

1093 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1094 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1095 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1096 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1097 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1098 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1099 (b) The Contracting Officer has previously notified the Contractor in writing that
1100 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1101 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1102 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under
1103 the terms and conditions of the separate agreement between the United States and the Operating Non-
1104 Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any
1105 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1106 successor determines, sets or establishes for (i) the Operation and Maintenance of the portion of the
1107 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor, or
1108 (ii) the Friant Division's share of the operation, maintenance and replacement costs for physical
1109 works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the
1110 O'Neill Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and
1111 the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such
1112 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1113 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project
1114 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal
1115 Entity collects payments on behalf of the United States in accordance with the separate agreement
1116 identified in subdivision (a) of this Article.

1117 (c) For so long as the Operation and Maintenance of any portion of the Project
1118 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1119 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under

1120 this Contract representing the cost associated with the activity being performed by the Operating
1121 Non-Federal Entity or its successor.

1122 (d) In the event the Operation and Maintenance of the Project facilities operated
1123 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the
1124 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1125 the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1126 Contractor for Project Water under this Contract representing the Operation and Maintenance costs
1127 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1128 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1129 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United
1130 States in compliance with Article 7 of this Contract.

1131 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1132 29. The expenditure or advance of any money or the performance of any obligation of the
1133 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1134 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1135 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1136 or allotted.

1137 BOOKS, RECORDS, AND REPORTS

1138 30. (a) The Contractor shall establish and maintain accounts and other books and
1139 records pertaining to administration of the terms and conditions of this Contract, including: the
1140 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1141 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1142 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1143 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1144 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1145 during office hours to examine and make copies of the other party's books and records relating to
1146 matters covered by this Contract.

1147 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1148 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1149 such books, records, or information are reasonably related to the administration or performance of
1150 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1151 to provide the requested books, records, or information.

1152 (c) At such time as the Contractor provides information to the Contracting Officer
1153 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1154 Operating Non-Federal Entity.

1155 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1156 31. (a) The provisions of this Contract shall apply to and bind the successors and
1157 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1158 therein shall be valid until approved in writing by the Contracting Officer.

1159 (b) The assignment of any right or interest in this Contract by either party shall not
1160 interfere with the rights or obligations of the other party to this Contract absent the written
1161 concurrence of said other party.

1162 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1163 of any proposed assignment.

1164 SEVERABILITY

1165 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1166 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1167 association or other form of organization whose primary function is to represent parties to Project
1168 contracts, brings an action in a court of competent jurisdiction challenging the legality or

1169 enforceability of a provision included in this Contract and said person, entity, association, or
1170 organization obtains a final court decision holding that such provision is legally invalid or
1171 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1172 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such
1173 final court decision identify by mutual agreement the provisions in this Contract which must be
1174 revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The
1175 time periods specified above may be extended by mutual agreement of the parties. Pending the
1176 completion of the actions designated above, to the extent it can do so without violating any applicable
1177 provisions of law, the United States shall continue to make the quantities of Project Water specified
1178 in this Contract available to the Contractor pursuant to the provisions of this Contract which were not
1179 found to be legally invalid or unenforceable in the final court decision.

1180 RESOLUTION OF DISPUTES

1181 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1182 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1183 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1184 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written
1185 notice of the intent to take such action; Provided, That such notice shall not be required where a
1186 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1187 During the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and
1188 confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is
1189 intended to waive or abridge any right or remedy that the Contractor or the United States may have.

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OFFICIALS NOT TO BENEFIT

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34. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

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CHANGES IN CONTRACTOR'S SERVICE AREA

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35. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

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(b) Within thirty (30) days of receipt of a request for such a change, the

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Contracting Officer will notify the Contractor of any additional information required by the

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Contracting Officer for processing said request, and both parties will meet to establish a mutually

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agreeable schedule for timely completion of the process. Such process will analyze whether the

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proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this

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Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this

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Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and

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(iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the

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Contracting Officer shall comply with the National Environmental Policy Act and the Endangered

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Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in

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this process, and such costs will be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

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36. By entering into this Contract, the Contractor does not waive its rights to contest the

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validity or application in connection with the performance of the terms and conditions of this

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Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the

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terms and conditions of this Contract unless and until relief from application of such Federal law or

1214 regulation to the implementing provision of the Contract is granted by a court of competent
1215 jurisdiction.

1216 NOTICES

1217 37. Any notice, demand, or request authorized or required by this Contract shall be
1218 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1219 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1220 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1221 Directors of the Chowchilla Water District, PO Box 905, Chowchilla, California 93610. The
1222 designation of the addressee or the address may be changed by notice given in the same manner as
1223 provided in this Article for other notices.

1224 CONFIRMATION OF CONTRACT

1225 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1226 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1227 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1228 validation proceedings, and all pertinent supporting records of the court approving and confirming
1229 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1230 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1231 year first above written.



(SEAL)

THE UNITED STATES OF AMERICA

By: /s/ William H. Luce, Jr.
Regional Director, Mid-Pacific Region
Bureau of Reclamation

CHOWCHILLA WATER DISTRICT

By: /s/ Dan Maddalena
President of the Board of Directors

Attest:

By: /s/ Douglas Welch
Secretary of the Board of Directors

(I:Chow.wpd)

EXHIBIT A

[Map or Description of Service Area]

Contract No. I75r-2358-LTR1

EXHIBIT B
[Initial Rates and Charges]

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